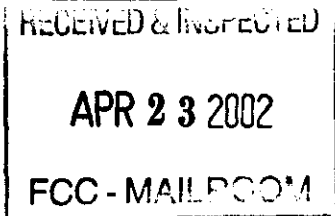


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170 /

Comments of
The Nebraska Independent Companies

I. Introduction

The Nebraska Independent Companies¹ (the “Companies”) hereby submit

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

comments in the above captioned proceeding². With this Further Notice of Proposed Rulemaking (“FNPRM”) the Federal Communications Commission (the “Commission”) seeks to further develop the record with comments on a range of proposals for reforming the current structure for contributions to the Universal Service Fund and the option of maintaining the current revenue based assessment system.

The Companies maintain that a per-connection system would likely shift the burden of universal service contributions to low volume toll users and would result in an inequitable restructure for collections whereby long distance carriers would make only a minimal contribution to the fund. A method by which assessments are determined by a percentage of retail interstate revenues more appropriately comports with the Section 254 (d) of the Telecommunications Act of 1996 which requires that “telecommunications providers should contribute on an equitable and non-discriminatory basis”³. The Companies believe that a modified revenue based assessment system should be implemented, and, with those changes, contributions to the Universal Service Fund would be both predictable and sustainable. Specifically, the current revenue-based system must be adjusted to properly capture revenue shifts associated with long distance demand

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (“*Per Connection Assessment FNPRM*”) (rel. Feb. 26, 2002).

³ 47 U.S.C. § 254 (d)

migration to wireless and Internet access alternatives⁴. This would be accomplished by investigating the interstate telecommunications revenues associated with wireless and bundled services and adjusting the safe harbor factors appropriately.

II. The Commission has not Recognized the Negative Impact of a Per-Connection Assessment System on the Majority of Residential Subscribers

The Commission asserts that a preliminary staff analysis that suggests the contribution of the “average household” would be identical at \$1.93 per month whether on a per-connection basis or under the current revenue system.⁵ The Companies submit that the Commission’s assumption that only two thirds of wireless subscriptions are residential in nature, which was used to develop the analysis, as well as the use of an average as the analysis statistic, should be critically examined.

The factor used to assign wireless subscriptions between households and businesses appears to have no basis. In fact, the *Sixth CMRS Competition Report*, which the Commission cites as a source for some of the data used in its analysis, indicates that according to one survey, 77 percent of wireless customers said they use their phones primarily for personal calls.⁶ Understating the proportion of residential wireless users among total wireless users, as it appears the Commission has done, certainly understates the total and average assessment that will be experienced by households. Such

⁴ Wireless carriers and Internet providers represent alternatives means to access long distance services. Both of these providers typically resell long distance services obtained from underlying long distance carriers.

⁵ See *Per Connection Assessment FNPRM* at para. 46.

⁶ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, FCC 01-192 (rel June 17, 2001).

understatement makes the per connection alternative appear less burdensome to households that it is likely to be.

More important to the decision is the identification of the proper analysis metric. An analysis metric that only views contributions on an “average household” basis certainly does not reveal the true statistical nature of the shifts in contributions that would occur. The Companies suggest that a decision metric should more appropriately reveal the distribution of contribution changes among households (i.e. how many households are paying more and how many are paying less). Verizon, in an Ex Parte contact in this proceeding,⁷ demonstrated how a per-line recovery mechanism would drastically increase the telephone service bills of households with lower long distance usage. Most significantly, Verizon’s analysis indicates that 80 percent of households would have an increased contribution burden under a per-line recovery mechanism.

The Commission should review its choice of the factor used to distribute wireless subscriptions between households and businesses, and its use of the average statistic as a decision metric as it considers the impact of the use of a per connection assessment mechanism. Also it is important to consider that both the *CALLS Order* and the *MAG Order* decisions have placed a significant additional burden on residential subscribers with the increases in the Subscriber Line Charge. The institution of a per connection assessment mechanism would only serve to magnify that burden.

⁷ See Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed Oct. 17, 2001.

III. The Commission Should Retain a Revenue Based System and Investigate the Safe Harbor Percentage Factors and Make Adjustments to those Factors Commensurate with the Actual Interstate Percentages for Wireless Carriers and Bundled Service Providers

In the FNPRM, the Commission suggests that certain market and technological trends could erode the contribution base of the universal service base over time.⁸ Some of the trends that the Commission cites as leading to possible erosion of the contribution base include a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers,⁹ packaging of services, for example, local and long-distance services,¹⁰ and packaging telecommunications services with customer premises equipment (“CPE”) or information services.¹¹ However, the reason these trends have eroded the contribution base is not because interstate revenues in total have decreased. Rather, these trends have eroded the contribution base because the Commission has not properly tracked interstate revenues as a result of these trends. The Companies believe that in order to appropriately assess retail revenue in the interstate jurisdiction, the revenue based assessment system should be redesigned to track the underlying demand shifts occurring between technologies, as well to track interstate revenues in bundled packages of services and CPE. A revenue-based assessment system can continue to provide a stable base for universal service assessments if interstate revenues are accounted for in a proper manner.

⁸ See *Per Line Assessment FNPRM* at para. 1.

⁹ Id. at para. 11.

¹⁰ Id. at para. 12.

¹¹ Id. at para. 13.

The Companies propose that the Commission reopen its investigation associated with interstate revenues for cellular and broadband Personal Communications Service (“PCS”) providers and seek supporting data for the determination of interstate percentages for those carriers. The Commission last reviewed the issue of interstate revenues for wireless carriers four years ago in its *Safe Harbor Order*¹². In that Order, the Commission chose to adopt a safe harbor factor in lieu of acquiring the supporting data.¹³ A factor of 15 percent was adopted based on the Dial Equipment Minutes (“DEM”) average for wireline carriers.¹⁴ The Companies contend that the utilization of an interstate wireline DEM surrogate of 15 percent represents an inappropriately low factor. At the time of adoption, the Commission noted that “[w]e find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor.”¹⁵ Thus, the Commission recognized that the estimate was conservative and that it was an interim measure.

The Companies contend that the relative jurisdictional distribution of traffic delivered by the two technologies are not comparable. Logically, a significant difference

¹² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278 (“*Safe Harbor Order*”) (rel. Oct. 26, 1998).

¹³ Commercial mobile radio services (“CMRS”) carriers had argued that it would be difficult to determine the amount of their traffic that is interstate, as areas served by a particular antenna do not correspond to state boundaries. See *id.* at para. 6. However, the coverage area of many antenna are likely to fall within a single state. Certain simplifying assumptions could be used for traffic from antenna that serve areas that include more than one state, or traffic could be sampled from antenna that only serve a single state area. While measurement of wireless calling data may not be as exact as that of wireline data, that is not a valid excuse to avoid measurement entirely.

¹⁴ *Id.* at para. 13.

¹⁵ *Ibid.*

in pricing strategies for local and long distance between wireless and wireline carriers will drive different proportions of traffic between local and long distance services. This very difference in pricing strategies was recognized by the Commission in the FNPRM. About 20 million mobile wireless customers, or about one-fifth of the total mobile wireless customers, subscribe to calling plans that do not charge extra for long-distance.¹⁶ This is consistent with a survey that reported that 16 percent of mobile service customers indicated that they use their mobile service rather than interexchange service to make long-distance calls.¹⁷ Clearly, the Commission has recognized the wireless carriers may be carrying greater amounts of interstate traffic than they were when the interim safe harbor was established. Therefore, an analysis of the proportion of interstate traffic carried by wireless carriers should be undertaken. An investigation should also be initiated for the bundling safe harbor factors in order to substantiate those percentages.

The current revenue assessment system is only flawed to the extent the system has not been properly extended to capture information identifying interstate revenues from the new providers in the market place. Determining the correct amount of interstate revenues from wireless carriers and bundled offerings can correct this situation, and would appropriately lead to assessment of interstate revenues across all technologies and providers. By doing this, the Commission would maintain a stable, accurate and accountable contribution base.

¹⁶ Id. at para. 12.

¹⁷ Id. at para. 11.

IV. The Position of Long Distance Carriers Supporting a Per-Connection Based Assessment System is Self Serving and Is Not Legally Sustainable

In its Comments in response to the Commission's NPRM in FCC 01-145 AT&T Corp. ("AT&T") argues that competitive developments in telecommunications markets are rapidly undermining the Commission's existing assessment method. AT&T indicates that the six-month lag between accrual and assessment of universal service obligations has created severe competitive distortions that favor carriers with increasing revenues¹⁸. The Companies assert that competitive distortions due to the time lag between accrual and assessments, if they do exist, can be easily corrected by further compressing the time period between those events. The Commission's 499 Q reports are filed quarterly, thus, the information is available so as to allow the Commission to make a change to mitigate any problem with lag.

AT&T goes on to assert that the only way to correct the problems associated with the current revenue based system is to move to a flat-rate assessment mechanism. AT&T bases that argument on three erroneous assumptions.¹⁹ First, a flat-rate mechanism is

¹⁸ See *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, ("USF Assessment Mechanism Docket") Comments of AT&T Corp. (filed June 25, 2001) at 2.

¹⁹ Id. at 11.

necessary to maintain equity and competitive neutrality in the face of prevailing trends in pricing that make a jurisdictional determination of revenue difficult or impossible. Second, a flat-rated mechanism would avoid the increasingly complex patchwork of special rules. And third, a flat rate assessment mechanism would be far simpler to administer.

To consider AT&T's second and third assumptions, the Commission need only review the myriad of questions it has raised relative to a connection-based system. It is clear that such a system would neither avoid the requirement for a complex patchwork of rules nor represent more simple administration. As far as the first assumption that a flat rate mechanism is necessary to maintain equity and competitive neutrality, such a system would actually have the opposite affect. The United States Telecom Association ("USTA"), in its Reply Comments in FCC 01-145, suggested that a per-line or any other flat rate method is *per se* unlawful and should not be seriously considered²⁰ because such a system would violate section 254(d) requirements for an equitable and non-discriminatory contribution mechanism. Several other parties have offered similar analysis in that proceeding.²¹ The United States Court of Appeals for the Fifth Circuit, in *Texas Office of Public Utilities Counsel v. FCC*, further made it clear that the Commission could not assess intrastate services to support an interstate universal service fund.²² The assessment on a per connection basis clearly is an assessment on intrastate services.

²⁰ See *USF Assessment Mechanism Docket*, Reply Comments of USTA (filed July 9, 2001) at 2.

²¹ See *USF Assessment Mechanism Docket*, Comments of SBC Communications at 15, Comments of Qwest Communications at 8, and Comments of Verizon at 2 (filed on June 25, 2001). See also Reply Comments of BellSouth Corporation (filed July 9, 2001) at 2.

²² See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Circuit 1999).

The underlying motivation for long distance carriers in supporting a connection based assessment system is a self-serving attempt to remove the majority of the contribution responsibility from their firms. The Commission should discount, in total, the specious arguments of AT&T and the other long distance companies supporting the connection based method. The problems that have been associated with a revenue-based system are not endemic to that system and can be corrected with administrative changes.

V. Conclusion

The Commission should carefully consider the decision metric it is using to assess the impact of a per-connection based assessment system and recognize the negative impacts on the majority of households. The Companies maintain that the Commission should implement a modified revenue-based system that would include the proper amounts of interstate revenue from wireless carriers and bundled services. The Commission should initiate an investigation of the safe harbor factors for both wireless carriers and bundled services and determine a procedure that properly tracks revenues as they migrate between technologies. The long distance carriers' arguments in support of a per-connection system for assessment have no merit and their actions are a self-serving attempt to shift away their responsibility for contributions to the universal service fund, and in doing so violate federal law.

Dated this 19th day of April, 2002.

Respectfully submitted,

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Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company,
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Hooper Telephone Company,
K&M Telephone Company, Inc.,
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